



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 25.11.2019**

**CORAM**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

**C.R.P. (NPD) (MD) No.614 of 2011**

**and**

**M.P(MD) No.1 of 2011**

1.Abdul Azeez (died)  
2.A.Shammem Begum  
3.A.Rafi Ahamed  
4.A.Misbha Begum  
5.A.Tajunnisa ... Petitioners  
(petitioners 2 to 5 are brought on record as LRs of  
deceased sole petitioner, vide Court order dated  
03.07.2019 made in C.M.P(MD) No.5615 of 2019)

**Vs.**

1.Hazarath Thaple Alam Padusha Natharvali Dharga  
rep by its Executive Trustee A.B.D.Badusha  
Madurai Road, Trichy-8.

2.A.M.Mohammed Jaffar Sadiq (Exonerated)  
3.J.Syed Mutharudeen (died)  
4.Abdul Basheer  
5.Saboora bi  
6.Shamimunnissa  
7.Pathima Bi  
8.N.Nazirudeen  
9.Syed Gulam Rasool ... Respondents

**PRAYER:-** Civil Revision Petition filed under Section 83(b) of the Wakf Act 1995 against the fair and decreetal order dated 09.04.2010 made in Wakf O.P.No.5 of 2006 on the file of the Principal Subordinate Judge, Trichy.

For Petitioners : Mr.K.K.Senthil  
for Mr.P.Santhosh Kumar

For R-1 : Mr.M.Siddharthan



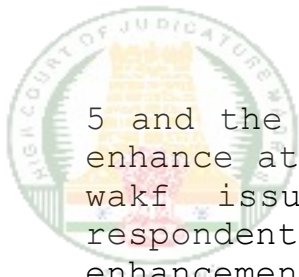
**ORDER**

The above application has been filed by the first respondent in Wakf.O.P.No.05 of 2006 on the file of the Principal Subordinate Judge, Trichy. The said petition was originally filed as suit in O.S.No.137 of 1997 before the Subordinate Judge, Trichy.

2.The parties are referred to in the same array as in the trial Court.

3.The petitioners / plaintiffs had originally filed a suit in O.S.No.137 of 1997 on the file of the Sub Court, Tiruchy, which was later converted into Wakf O.P.No.5 of 2006 before the tribunal, for recovery of possession from the defendants 1 to 5 and for a direction to them to pay a sum of Rs.40,000/- being arrears of rent/damages for use and occupation from 01.10.1996 to 31.01.1997 and for future damages at the rate of Rs.10,000/- from February 1997. The property in question is a storeyed building along with vacant site situated within the Corporation limits of Trichy. The case of the petitioners / plaintiffs is that the father of the respondents 1 to 5 / defendants 1 to 5 was inducted as a tenant on a monthly rental of Rs.1050/-. The rent was enhanced to a sum of Rs.10,000/- with effect from 01.07.1993 and the details of the enhancement was issued to the father of the respondents 1 to 5 / defendants 1 to 5 by letter dated 29.06.1993. The father of the respondents 1 to 5 / defendants 1 to 5 have accepted the enhancement without any demur. The petitioners' premises is situated in a prime locality near Tiruchy and the bus stand, commercial complex, business office, etc., are situated nearby. The market value of the site is heavy and the rental in the area is way above a sum of Rs. 10,000/- per month. Since the respondents 1 to 5 / defendants 1 to 5 started defaulting in paying the monthly rents, the petitioners / plaintiffs terminated the tenancy on 30.09.1996 and the petitioners / plaintiffs had issued a legal notice on 01.10.1996 calling upon the respondents 1 to 5 / defendants 1 to 5 to hand over the possession of the property. Reply dated 20.08.1996 was issued by the first respondent claiming permanent tenancy as they are having right as per 99 years old tenancy agreement. This constrained the plaintiffs to file a suit in question.

4.The first respondent had filed a written statement *inter-alia* contending that the rent agreed at the inception is only a sum of Rs.611/-, which was thereafter enhanced to a sum of Rs.711/- in the year 1984. By virtue of an understanding arrived at between the father of the respondents 1 to 5 / defendants 1 to



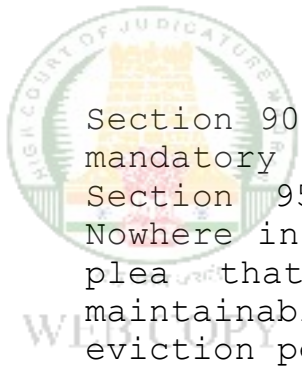
5 and the Executive Trustee, on 01.04.1985 the rent was agreed to enhance at 5% of the basic rent every year. The superintendent of wakf issued a notice on 29.06.1993 to the father of the respondents 1 to 5 / defendants 1 to 5 intimating them about the enhancement of the monthly rent to which objection was sent immediately on 18.07.1994 by the first defendant. Thereafter, another notice was issued by the Executive Trustee on 18.07.1994. It is the case of the respondents 1 to 5 / defendants 1 to 5 that on that date, the parties had agreed that the respondents 1 to 5 / defendants 1 to 5 to pay a rent of Rs.2,100/- per month. Despite agreeing to the above measure, the petitioners / plaintiffs did not receive the rent and insisted on the enhanced rent of Rs.10,000/- per month. The respondents 1 to 5 / defendants 1 to 5 would contend that the notice of termination was not valid and further the respondents 1 to 5 / defendants 1 to 5 have invested huge amount for the business and the amount were due from sundry debtors and therefore, evicting them from the premises, would cause great deal of hardship and loss to the respondents 1 to 5 / defendants 1 to 5. Therefore, they would submit that they will not liable to be evicted and the rent in question is only a sum of Rs.2,100/- and not Rs.10,000/- as claimed.

5.The learned Principal Subordinate Judge, Tiruchy, by his judgement and decree dated 09.04.2010 was pleased to allow the Wakf .O.P and the following decree was passed:-

*The respondents 1 to 5 are directed to vacate and deliver possession of the petition schedule property to the first petitioner trust on or before 09.05.2010 and the first respondent is directed to pay rental arrears of Rs.3,19,200/- to the first petitioner trust on or before 09.05.2010 and continue to pay further rent at the rate of Rs.2,100/- per men sum till he vacates the property and the respondents 1 to 5 are directed to pay a sum of Rs.3613/- being the costs of the petitioner.*

Challenging the said judgment, the revision petitioner/first respondent had filed the above civil revision petition.

6.The ground of challenge on the judgment and decree in the revision petition is that the rent in question is only a sum of Rs.1,133/- and not Rs.10,000/- as claimed by the petitioners / plaintiffs and that the petitioners / plaintiffs were in the habit of receiving the rent in lumpsum and the respondents 1 to 5 / defendants 1 to 5 were also in the habit of making lumpsum payment. The respondents 1 to 5 / defendants 1 to 5 would also taken out the plea that they have spent substantial amount to renovate the buildings, obtain electricity connection, etc., with reference to the demised premises. The respondents 1 to 5 / defendants 1 to 5 had also raised the plea that no notice under



Section 90 of the Wakf Act was issued to the Wakf Board, which is mandatory and that the Wakf Board is also not impleaded as per Section 95 of the Wakf Act, which once again is mandatory. Nowhere in the grounds the revision petitioners have taken out the plea that the petition before the Wakf Tribunal was not maintainable, since the proceeding is related to pre-amendment eviction petition.

7. When the matter listed today, Mr. M. Siddharthan, learned counsel for the revision petitioners would contend that the petition had been filed prior to the amendment of the Wakf Act on 01.11.2013 and therefore, it was filed only under the old Act of 1995 of the Wakf Act. It was the argument that prior to the Amendment, 2013 the Tribunal was empowered to determine the dispute, question or other matters relating to the wakf property under the Act and the proceedings for eviction was brought within the jurisdiction of the Wakf Tribunal only after the Amendment Act 27 of 2013, with effect from 01.11.2013. He would therefore contend that Wakf.O.P.No.5 of 2006 was not maintainable before the Tribunal and that the decree has been passed by the Court without any jurisdiction. In support of his Contention, he would also rely on the following judgments:-

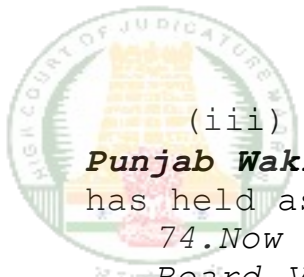
(i) In the judgment reported in **(2010) 8 SCC 726** in the case of **Ramesh Gobindram (Dead) through LRs Vs. Sugra Humayun Mirza wakf**, the Hon'ble Supreme court has held as follows:-

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil Court and not before the Tribunal.

(ii) The judgment of the Hon'ble Supreme Court reported in **2014 (16) SCC 38** in the case of **Faseela M. Vs Munnerul Islam Madrasa Committee and another**, would state as follows:-

8. The question, for determination in these appeals, is as to whether the suit for eviction by the landlord against the tenant relating to wakf property is triable by the civil court or the suit lies within the exclusive jurisdictions of the Wakf Tribunal.

16. The matter before us is wholly and squarely covered by Ramesh Gobindram. The suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.



(iii) The judgment reported in **2019(4) SCC 698** in the case of **Punjab Wakf Board Vs. Sham Singh Harike**, the Hon'ble Supreme Court has held as follows:-

74. Now coming to Civil Appeal No.93 of 2019 (Punjab Wakf Board V. Teja Singh), the suit was filed by the Wakf Board for possession of suit property and injunction in the Tribunal. The above suit was fully covered by the ratio laid down by this Court in Ramesh Gobindram. The High Court relying on Ramesh Gobindram case has allowed the revision petition filed by the defendant. We do not find any error in the order of the High Court allowing the revision petition filed by the defendant directing the plaint along with documents was returned to be presented before the appropriate Court i.e. the civil court. We uphold the above order of the High Court. In the result, this appeal deserves to be dismissed.

8. The learned counsel for the first respondent / first petitioner on the other hand would submit that the respondents 1 to 3 had originally filed a suit before the proper Court namely, the Sub Court, Tiruchy and the suit was numbered as O.S.No.137 of 1997 and after the constitution of the Tribunal, the matter is transferred to Wakf Tribunal. The defendants did not object to the same and now they cannot be permitted to take the stand that the Wakf.O.P. was not maintainable before the tribunal.

9. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent and perused the papers.

10. The records would reveal that the proceedings were initially instituted as suit in O.S.No.137 of 1997 before the Subordinate Court, Trichy. Thereafter, the proceeding was transferred to the Wakf Tribunal and taken on file as W.O.P.No.05 of 2006 and the defendants have not objected to the transfer. In fact, the defendants have challenged the petition to implead one A.B.D.Badusha as Executive Trustee and the matter was taken up by way of revision before this Court in C.R.P(MD) No.473 of 2008, wherein this Court has upheld the nomination of A.B.D.Badusha as Executive Trustee. The judgment and decree of the trial Court would reveal that no objection has been taken by the defendants, when the matter was being heard by the wakf tribunal. The question of jurisdiction was not even argued in the earlier revision petition in C.R.P(MD) No.473 of 2008. Therefore, the petitioners are restrained to question the jurisdiction of the Court as they have submitted themselves to the said jurisdiction. Therefore, at the stage of arguments in the civil revision petition, the revision petitioners cannot be permitted to put forward such an argument.



11.Further the tribunal below has clearly held that there has been a default on the part of the revision petitioners and the lodgement schedule which was filed in the typed set of papers, would also indicate that the revision petitioners had paid the arrears of rent from the year August 1997 only in March 2007. Therefore, the default is huge and on that basis, the judgment which have been cited on the side of the revision petitioners may not help them, since they have themselves submitted to the jurisdiction of the tribunal and have also not raised any objection when the matter was being tried before the Tribunal. That apart, the original institution of the proceedings was only in the form of civil suit before the concerned civil Court and the transfer has been effected only after the Tribunal has been formed and therefore, the respondents 1 to 3 / petitioners / plaintiffs cannot be faulted.

12.In view of the above observations, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

CP  
To

The Principal Subordinate Judge, Trichy.

+1 CC to MR.M. SIDDHARTHAN, Advocate ( SR-101047[F] dated 25/11/2019 )

**C.R.P. (NPD) (MD) No.614 of 2011**  
**and**

**M.P (MD) No.1 of 2011**  
**25.11.2019**

\_KM/ (19.12.2019) 6P 3C